IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 100 of 2007
With
COMPANY PETITION No. 101 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DANIEL MEASUREMENT AND CONTROL(INDIA) PRIVATE LIMITED - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MR SAURABH SOPARKAR with MR. DEVANG NANAVATI with MR RAJESH PARIKH for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 23/08/2007

ORAL JUDGMENT

1. The present petitions are preferred for sanctioning the Scheme of Demerger. The petitioner of Company peition No.100/07 is Transferor Company and the petitioner of Compnay Petition No.101/01 is the Transferee Company. The Scheme of Demerger which is proposed to be sanctioned is produced at Annexure-A in the petitions.

2. In Company Petition No.100/07, vide Order dated 30.03.2007, passed by this Court (Coram:M.R.Shah,J.) in Company Application No.149/07, the meeting of the equity shareholders and sole secured creditor were dispensed with. However, meeting of unsecured creditors was ordered to be convened on 04.05.2007 after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto, Mr. Umed A. Fifadra, the Chairman appointed for such purpose has filed the affidavit dated 07.05.2007 together with the proceedings of the meeting showing that the Scheme of Demerger was approved unanimously by the unsecured creditors present at the meeting.

3. In Company Petition No.101/07, vide Order dated 30.03.2007, passed by this Court (Coram:M.R.Shah,J.), the meeting of equity shareholders was dispensed with.

4. Both these petitions came to be admitted on 08.05.2007 and it was ordered to be advertised

in two local newspapers, i.e Indian Express English daily & Loksatta Jansatta, Gujarati daily, both Vadodara edition. Publication in the Government gazette was dispensed with. Notice was also ordered to be issued to the Central Government through Regional Director, Department of Corporate Affairs.

5. The affidavit is filed by Anand Shukla, Clerk of M/s. Nanavati & Nanavati Advocates together with the copy of the paper publication pursuant to the order passed by this Court. Mr.D.S. Nanavati, learned advocate for petitioners has filed affidavit stating that no objection is received by the petitioner Company/ies or his office in response to the advertisement opposing the Scheme of Demerger or otherwise.

6. In Company Applications Nos. 264/07 and 265/07, the amendment has been allowed and therefore, the scheme as required to be considered would be with the amendment.

7. In response to the notice issued to the Central Government, Mr. P.L.Malik, Assistant Registrar of Companies has filed affidavit raising an objection based on the communication received by the Registrar of Companies vide letter dated 05.07.2007 from the Regional Director, Corporate Affairs.

8. One objection relates to furnishing of the

latest financial position, which in any case has been filed and therefore, such objection would not survive. The another objection is on the basis that the share capital of the Demerged Company would stand reduced in the event the Scheme is sanctioned and therefore, the procedure as required under Section 100 of the Companies Act will be required to be followed.

9. As such, upon the perusal of the Scheme, and more particularly clause 8.1, it cannot be said that there will be any reduction in the shae capital since the assets are to be transferred and in lieu of the same, additional shares are to be acquired.

10. Mr. Raval, learned Assistant Solicitor General is also not in a position to support the objection on facts by showing that the Scheme of Demerger, if implemented, would result into reduction of the share capital of either of the Company. Hence, such objection is meritless.

11. No other adverse circumstances are brought to the notice of this Court.

12. Hence, the present Scheme of Demerger is sanctioned as per the provisions of the Companies Act.

13. Petitions are allowed to the aforesaid extent accordingly.

10. Considering the facts and circumstances that there were also Company Applications Nos.100/07 & 101/07 for amendment in which also, notices were issued to the Central Government, cost of the learned Assistant Solicitor General is quantified at Rs. 4,500/- in each petitions. It will be open to the concerned Company or the authorised advocate to make the payment by A/c. Payee cheque to the learned Assistant Solicitor General.

(JAYANT PATEL, J.)

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